Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-02 OF 1999

ABDUL HAMID MOHAMAD, MOHD SAARI AND MOHD NOOR AHMAD JJCA

16 AUGUST 2002

Labour Law *— Employment — Dismissal — Whether the first respondent delayed in making decision to dismiss appellant — Whether appellant was informed on which of the three charges he was dismissed*

The appellant joined the police force in 1960. He rose to the rank of Assistant Superintendent of Police (ASP) until his dismissal. He received a show cause letter with a view to a disciplinary action against him on 30 September 1994. On 17 September 1994, the appellant made a written representation to the first respondent. By a letter dated 9 August 1996, the appellant was dismissed from the force with effect from 29 June 1996. He filed a suit against the respondents seeking a declaration that his dismissal was null and void. The action was dismissed. He appealed to the Court of Appeal on two grounds, inter alia: (i) delay of the first respondent to make its decision to dimiss him; and (ii) he was not informed on which of the three charges he was dismissed.

Held, dismissing the appeal:

(1) The learned judge considered the extremely heavy duties of the members and the fact that the Commission's Secretariat was handling a great number of disciplinary cases and concluded that the Commission had discharged its duties within a reasonable time or, in the words of s 54(2) of the Interpretation Acts 1948 and 1967 'with all convenient speed' (see p 717C).

(2) The court agreed with the learned judge that there was no requirement in Chapter D of the 1980 General Order, or for that matter, in any law, that such a decision must be communicated to the appellant (see p 717E–F).

[Bahasa Malaysia summary

Perayu telah berkhidmat dalam angkatan polis pada 1960. Beliau telah dinaikkan pangkat Penolong Superintenden Polis ('PSP') sehingga beliau diberhentikan kerja. Beliau telah menerima sepucuk surat tunjuk sebab di mana terdapat satu tindakan tatatertib terhadap beliau pada 30 September 1994. Pada 17 September 1994, perayu telah membuat satu representasi bertulis kepada responden pertama. Melalui sepucuk surat bertarikh 9 Ogos 1996, perayu telah diberhentikan kerja daripada angkatan polis mula berkuatkuasa

29 Jun 1996. Beliau telah memfailkan satu guaman terhadap responden memohon satu deklarasi bahawa pemecatan beliau adalah batal dan tidak sah. Beliau telah merayu ke Mahkamah Rayuan atas dua alasan, antara lain: (i) kelewatan responden pertama untuk membuat keputusannya untuk memecat beliau; dan (ii) beliau tidak dimaklumkan antara tiga tuduhan mana yang beliau telah dipecat.

Diputuskan, menolak rayuan tersebut:

(1) Hakim yang bijaksana telah mengambilkira tanggungjawab-tanggungjawab berat ahli-ahli dan hakikat bahawa Sekretariat Pesuruhjaya mengendalikan sebilangan besar kes-kes tatatertib dan membuat kesimpulan bahawa Pesuruhjaya telah melepaskan tanggungjawab-tanggungjawabnya dalam masa yang munasabah atau, dalam ertikata s 54(2) Akta Tafsiran 1948 dan 1967 'with all convenient speed' (lihat ms 717C).

(2) Mahkamah bersetuju dengan hakim yang bijaksana bahawa tiada keperluan dalam Bab D Peraturan Am 1980, maupun bagi perkara tersebut, dalam mana-mana undang-undang, bahawa keputusan sedemikian perlu dimaklumkan kepada perayu (lihat ms 717E–F).]

Notes

For cases on dismissal, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 813–832.

Cases referred to

Ghazi bin Mohd Sani v Mohd Haniff bin Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 MLJ 114 (refd)
SK Serajah v State of West Bengal AIR 1975 SC 1517 (refd)
Tai Choi Yu v Government of Malaysia [1994] 1 MLJ 678 (refd)

Legislation referred to

Interpretation Acts 1948 and 1967 s 54(2)
Public Officer (Conduct and Discipline) Regulations 1993

Karpal Singh (*Karpal Singh & Co*) for the appellant.
Azizah bte Nawawi (AG's Chambers) for the respondent.

Abdul Hamid Mohamad JCA (delivering judgment of the court): The appellant was the plaintiff in the High Court. He filed a suit against the respondents seeking for a declaration, in brief, that his dismissal as a police officer was null and void and consequential orders. The High Court dismissed his action. He appealed to this court. We dismissed the appeal. Here are our grounds.

The appellant joined the Police Force in 1960. He rose to the rank of Assistant Superintendent of Police ('ASP'). He held this rank until his dismissal.

On 30 September 1994, a show cause letter with a view to a disciplinary action against him was forwarded to him. On 17 November 1994, the appellant made a written representation to the first respondent. By a letter dated 9 August 1996, the appellant was informed that he was dismissed from the force with effect from 29 June 1996. At the time when he received the letter of dismissal, he had passed his mandatory retirement age which fell on 7 July 1996 but his services was extended until the day the decision to dismiss him was made.

Two grounds were argued before us. The first ground was the delay of one year and eight months for the first respondent to make its decision to dismiss the appellant. The second ground was that the appellant was not informed on which of the three charges he was dismissed.

This is one appeal in which we agree entirely with the decision and the reasons thereto of the learned judge that we do not think it is necessary to repeat the same reasons at length.

The relevant provision is the Public Officer (Conduct and Discipline) Regulations 1993, in so far as it is relevant to the facts of this case, provides:

> If ... the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide the dismissal ... of the officer.

No time limit is provided for the decision to be made.

Section 54(2) of the Interpretation Acts 1948 and 1967, inter alia, provides:

> Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed ... .

As correctly pointed out by the learned judge, quoting Bhagwal J in *SK Serajah v State of West Bengal* AIR 1975 SC 1517:

> Each case must depend on its own peculiar facts and circumstances.

Our own Supreme Court, in *Tai Choi Yu v Government of Malaysia* [1994] 1 MLJ 678, has held at p 683:

> What is 'convenient speed' has been held by the courts to mean reasonable time within which an act has to be done, but always having regard to the facts and peculiar circumstances of each case.

We accept that that is the law.

The facts and circumstances of this case were discussed at length by the learned judge. He considered them under two heads, first, the constitution of the members of the Commission and secondly, the administrative machinery of the Commission.

Regarding the constitution of the Commission, as pointed out by the learned judge, it consists of nine members, headed by the Prime Minister of Malaysia in his then capacity as Minister of Home Affairs. The other members were the Inspector General of Police, the President of the Court of Appeal and six other notable personalities. DW1, the assistant secretary of the Commission explained the procedures of the decision making process. The relevant documents were forwarded to the members of the Commission who had to study them and return them to the Commission Secretariat with their views. The views subsequently received from the members were 'processed' and the decision would then be forwarded to the Chairman of the Commission.

The learned judge considered the extremely heavy duties of the members and the fact that the Commission's Secretariat was handling a great number of disciplinary cases and concluded that the Commission had discharged its duties within a reasonable time or, in the words of s 56 of the Interpretation Act 'with all convenient speed'.

We agree with him.

On the second ground, it was argued that the appellant should have been told on which charge(s) he was dismissed. On this ground also, we agree entirely with the decision and the reasons thereto given by the learned judge, although the learned judge had misstated that the Commission accepted the appellant's representation on the first charge but not on the second and third charges for which he was dismissed. In fact, according to DW1, the Commission accepted the appellant's representation as the third charge but not on the first and second charges. We agree with the learned judge that there is no requirement in Chap D of the 1980 General Orders, or for that matter, in any law, that such a decision must be communicated to the appellant. We would like to reiterate what Jemuri Serjan CJ (Borneo), delivering the judgment of the Supreme Court, said in *Ghazi bin Mohd Sani v Mohd Haniff bin Omar, Ketua Polis Negara Malaysia & Anor* [1994] 2 MLJ 114, which was also referred to by the learned judge (at p 130):

> In dealing with Ch D of the 1980 General Orders we remind ourselves that we are dealing with General Orders that have legislative effect and we must guard ourselves against adding words into them which were never intended.

We would add that, in dealing with tribunals like the Police Commission, we should also guard ourselves from turning them into a court of law trying a criminal case, which they were not, and was never intended to be.

On these grounds, we dismissed the appeal with costs and ordered that the deposit be paid to the respondents towards taxed costs.

Appeal dismissed.

Reported by Zahid Taib